

## **Rights & Responsibilities**

### **The Virginia Freedom of Information Act**

The Virginia Freedom of Information Act (FOIA), located at § 2.2-3700 et. seq. of the Code of Virginia, guarantees citizens of the Commonwealth and representatives of the media access to public records held by public bodies, public officials, and public employees.

A public record is any writing or recording -- regardless of whether it is a paper record, an electronic file, an audio or video recording, or any other format -- that is prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. All public records are presumed to be open, and may only be withheld if a specific, statutory exemption applies.

The policy of FOIA states that the purpose of FOIA is to promote an increased awareness by all persons of governmental activities. In furthering this policy, FOIA requires that the law be interpreted liberally, in favor of access, and that any exemption allowing public records to be withheld must be interpreted narrowly.

#### **Your FOIA Rights**

- You have the right to request to inspect **or** receive copies of public records, or both.
- You have the right to request that any charges for the requested records be estimated in advance.
- If you believe that your FOIA rights have been violated, you may file a petition in district or circuit court to compel compliance with FOIA.

Most all FOIA information is available online.

#### **Easiest Way to Get Information**

Over the past several years, the Department has posted **most** information that is available on the following web sites. In one 3-month period, DHP had over 500,000 visits to the first three sites listed below!

#### **Department of Health Professions**

[“www.dhp.virginia.gov”](http://www.dhp.virginia.gov)

- Law
- Regulation
- Complaint information
- Newsletters
- Policy (guidance documents)
- Recent case decisions
- Links to the sites below

### **License Look-up**

[“www.vipnet.org/dhp/cgi-bin/search\\_publicdb.cgi”](http://www.vipnet.org/dhp/cgi-bin/search_publicdb.cgi)

- Look up who is currently licensed
- Access to purchase lists of licenses

### **Physician Profile**

[“www.vahealthprovider.com”](http://www.vahealthprovider.com)

Extensive information about currently licensed doctors of medicine, osteopathy and podiatry, including:

- Practice location
- Hospital affiliations
- Education
- Residencies
- Board certifications
- Insurance
- Honors and awards
- Appointments and publications
- Proceedings, actions, and convictions
- Paid malpractice claims

### **Commonwealth Calendar**

[“www.vipnet.org/portal/cgi-bin/calendar.cgi”](http://www.vipnet.org/portal/cgi-bin/calendar.cgi)

Includes all Board and Committee meetings, including:

- Name of Board or Committee
- Date and time
- Location
- Links to available agenda
- Links to minutes
- Staff contacts
- Accessibility information

### **Regulatory Town Hall**

[“http://www.townhall.virginia.gov/”](http://www.townhall.virginia.gov/)

Information on changes to regulations, including:

- Rules being drafted
- Rules proposed
- Newly adopted rules
- Public comment on proposed actions
- How to petition for a change in rules

### **Making a Request for records from the Department of Health Professions**

- You may request records by U.S. Mail, fax, e-mail, in person, or over the phone. FOIA does not require that your request be in writing, nor do you need to specifically state that you are requesting records under FOIA.
- From a practical perspective, it may be helpful to both you and the person receiving your request to put your request in writing. This allows you to create a record of your request. It also gives us a clear statement of what records you are requesting, so that there is no misunderstanding over a verbal request. However, we cannot refuse to respond to your FOIA request if you elect not to put it in writing.
- Your request must identify the records you are seeking with "reasonable specificity." This is a common-sense standard. It does not refer to or limit the volume or number of records that you are requesting; instead, it requires that you be specific enough so that we can identify and locate the records that you are seeking.
- Your request must ask for records or documents. FOIA gives you a right to inspect or copy **records**; it does not apply to a situation where you are asking general questions about the work of the Department of Health Professions or a specific Board within the Department. We are sometimes asked to create new records which we are unable to do.
- You may choose to receive electronic records in any format used by the Department in the regular course of business.
- For example, if you are requesting records maintained in an Excel database, you may elect to receive those records electronically, via e-mail or on a computer disk, or to receive a printed copy of those records
- If we have questions about your request, please cooperate with staff's efforts to clarify the type of records that you are seeking, or to attempt to reach a reasonable agreement about a response to a large request. Making a FOIA request is not an adversarial process, but we may need to discuss your request with you to ensure that we understand what records you are seeking.

**To request records from the Department, you may direct your request to the contact person. The custodian of records can be reached at the Department address or e-mail listed in the next section. You may also contact the custodian of records with questions you have concerning records requests from the Department. In addition, the Freedom of Information Advisory Council is available to answer any questions you may have about FOIA. The Council may be contacted by email at [foiacouncil@leg.state.va.us](mailto:foiacouncil@leg.state.va.us), or by phone at (804) 225-3056 or toll free at 1-866-448-4100.**

### **The Department's Responsibilities in Responding to Your Request**

The following individuals within the Department are designated as the custodians of records and are responsible to respond to FOIA requests as noted below:

<u>Custodian</u>	<u>Records</u>
Elizabeth Carter <a href="mailto:elizabeth.carter@dhp.virginia.gov">elizabeth.carter@dhp.virginia.gov</a>	All records associated with the Boards of Health Professions and Optometry
Evelyn Brown <a href="mailto:evelyn.brown@dhp.virginia.gov">evelyn.brown@dhp.virginia.gov</a>	All records associated with the Boards of Psychology, Social Work, and Professional Counselors
Elizabeth Young <a href="mailto:elizabeth.young@dhp.virginia.gov">elizabeth.young@dhp.virginia.gov</a>	All records associated with the Boards Funeral Directors & Embalmers and Veterinary Medicine
Sandra Reen <a href="mailto:sandra.reen@dhp.virginia.gov">sandra.reen@dhp.virginia.gov</a>	All records associated with the Board of Dentistry
Scotti Russell <a href="mailto:pharmbd@dhp.virginia.gov">pharmbd@dhp.virginia.gov</a>	All records associated with the Board of Pharmacy
Jay Douglas <a href="mailto:jay.douglas@dhp.virginia.gov">jay.douglas@dhp.virginia.gov</a>	All records associated with the Board of Nursing
William Harp <a href="mailto:william.harp@dhp.virginia.gov">william.harp@dhp.virginia.gov</a>	All records associated with the Board of Medicine
Lisa Hahn <a href="mailto:lisa.hahn@dhp.virginia.gov">lisa.hahn@dhp.virginia.gov</a>	All records associated with the Boards of Physical Therapy, Audiology and Speech-Language Pathology and Physical Therapy

- All of the individuals referenced above may be contacted at our main address: 6603 West Broad street, 5th Floor, Richmond, Virginia 23230-1717

- The Department must respond to your request within five working days of receiving it. "Day One" is considered the day after your request is received. The five-day period does not include weekends or holidays.
- The reason behind your request for public records from the Department is irrelevant, and we cannot ask you why you want the records before we respond to your request. FOIA does, however, allow the Department to ask you to provide your name and legal address.
- FOIA requires that the Department make one of the following responses to your request within the five-day time period:
  - 1) We provide you with the records that you have requested in their entirety.
  - 2) We withhold all of the records that you have requested, because all of the records are subject to a specific statutory exemption. If all of the records are being withheld, we must send you a response in writing. That writing must identify the volume and subject matter of the records being withheld, and state the specific section of the Code of Virginia that allows us to withhold the records.
  - 3) We provide some of the records that you have requested, but withhold other records. We cannot withhold an entire record if only a portion of it is subject to an exemption. In that instance, we may redact the portion of the record that may be withheld, and must provide you with the remainder of the record. We must provide you with a written response stating the specific section of the Code of Virginia that allows portions of the requested records to be withheld.
  - 4) If it is practically impossible for the Department to respond to your request within the five-day period, we must state this in writing, explaining the conditions that make the response impossible. This will allow us seven additional working days to respond to your request, giving us a total of 12 working days to respond to your request.
- If you make a request for a very large number of records, and we feel that we cannot provide the records to you within 12 days without disrupting our other organizational responsibilities, we may petition the court for additional time to respond to your request. However, FOIA requires that we make a reasonable effort to reach an agreement with you concerning the production of the records before we go to court to ask for more time.

### **Costs**

- You may have to pay for the records that you request from the Department. FOIA allows us to charge for the actual costs of responding to FOIA requests. This would include items like staff time spent searching for the requested records, copying costs, or any other costs directly related to supplying the requested records. It cannot include general overhead costs.
- If we estimate that it will cost more than \$200 to respond to your request, we **may** require you to pay a deposit before proceeding with your request or we may bill you.

- You may request that we estimate in advance the charges for supplying the records that you have requested. This will allow you to know about any costs upfront, or give you the opportunity to modify your request in an attempt to lower the estimated costs.

### **Commonly used exemptions**

The Code of Virginia allows any public body to withhold certain records from public disclosure. The Department of Health Professions commonly withholds records subject to the following exemptions:

- Personnel records (§ 2.2-3705.1(1) of the *Code of Virginia*)
- Records subject to attorney-client privilege (§ 2.2-3705.1(2)) or attorney work product (§ 2.2-3705.1(3))
- Vendor proprietary information (§ 2.2-3705.1(6))
- Records relating to the negotiation and award of a contract, prior to a contract being awarded (§ 2.2-3705.1(12))
- Records of active investigations being conducted (§2.2-3705.3(2))
- Any tests or examination used to license or certify individuals (§2.2-3705.1(4))
- Applications for examination or licensure except to the applicant (§ 2.2-3705.5(2))

The *Code of Virginia* **prohibits** release of information which has been turned over to a board or is developed by a board in connection with disciplinary matters. However, any notice or order of a board is available. (54.1-2400.2)